

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO. 1082 OF 2022

1. Krushna s/o Kashinath Karhale (Brother-in-law)
Age : 30 years, Occu. Labour.

2. Saraswati Krushna karhale (Sister-in-law)
Age : 26 years, Occu. Housewife,

Both R/o. Jamb (Kh.), Tq. Jintur,
Dist. Parbhani, At present R/o. Room No. 3,
Jivdani Pooja Apartment,
Chimgharali Achole Road, Vasai East,
Near Santoshi Mata Mandir,
Vasai-Palghar.

...Applicants

Versus

1. The State of Maharashtra

2. Radha w/o Shivaji Karhale,
@ Radha d/o Pandurang Ghatul,
Age : 22 years, Occu. Household,
R/o. Karvali, Tq. Jintur,
Dist. Parbhani.

...Respondents

[Resp. No. 2 – Orig. Informant]

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Mr. Shailendra S. Gangakhedkar, Advocate for the applicants
Mr. A. M. Phule, APP for respondent/State

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**CORAM : SMT. VIBHA KANKANWADI
AND
RAJESH S. PATIL, JJ.**

DATE : AUGUST 17, 2022

ORAL JUDGMENT [PER RAJESH S. PATIL, J.] : -

1. By this application, the applicants invoke the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 and Article 226 of the Constitution of India, seeking quashment of the First Information Report No.0175/2021 registered with Bori Police Station, Dist. Parbhani, for the offences punishable under Sections 498A, 323, 504 r/w 34 of the Indian Penal Code.

A] FACTS : -

2. The applicants have filed copy of F.I.R. along with the Criminal Application. It is the case of the respondent no. 2 in the First Information Report that she got married with brother of applicant no. 1, namely, Shivaji, who is paternal aunt's son, on 28.04.2015. They have no issue from the said wedlock. After marriage, respondent no. 2 started residing with her husband Shivaji along with applicant nos. 1 and 2 at Vasai. It is stated in the F.I.R. that, after marriage, husband of respondent no. 2 did not entertain her and used to interact with applicants only for which informant/respondent no. 2 objected to. It is further stated that initially for a period of one month after the marriage, she was treated well by her husband but later on her husband was not talking to her properly. It is further case of respondent no. 2 in the FIR that her sister-in-law used to do all the work of her husband
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and when respondent no. 2 asked her husband as to the cause of such treatment, quarrel had taken place between the duo and the husband of respondent no. 2 abused and beat her and made an unlawful demand of Rs. 50,000/- for purchasing the motorcycle. The brother-in-law and the sister-in-law of the respondent no. 2 adopted the same language as used by husband of respondent no.2.

3. It is further stated in the FIR that the respondent no.2, her husband and applicants used to live in one Wada i.e. consisting of houses of several families. The husband of respondent no. 2 and sister-in-law used to keep informant starved and when respondent no. 2 asked the reason behind this, her sister-in-law would backbite about her to husband of respondent no. 2, hence, her husband used to beat her and harass her. The respondent no. 2 somehow tolerated the harassment meted out to her for about four and half years.

4. It is further case of respondent no. 2 in the FIR that last year at the time of Diwali festival, the husband of respondent no. 2 demanded her jewellery or money and raised quarrel over the said issue and abused and beat her. As she could not bear the harassment, she informed her parents about the said issues and thereafter her parents came to Mumbai and took her back to parental home at Karvali, Dist. Parbhani, so that the things would get settled. However, even after one year, the husband and the in-laws did not bother to take respondent no. 2 to her matrimonial

home, the respondent no. 2 filed complaint with Bori Police Station for the offences referred to herein above.

5. The applicants have stated in the present Criminal Application that they are the brother-in-law and sister-in-law, respectively of the respondent no. 2. They are not at all concerned with the allegations levelled against them. Respondent no. 2 has, with *mala fide* intention, dragged them in the false prosecution, which is not sustainable in the eyes of law and same amounts to abuse of process of law. It is further stated in the application that the applicants never shared common shelter with respondent no. 2 and Shivaji, at any point of time. It is further stated that, since the father of applicant no. 1 passed away on 05.01.2014, the marriage of applicant no. 1's brother Shivaji was performed immediately within a year as per the customs prevailing, with respondent no. 2, who happens to be the daughter of maternal uncle and, therefore, there is close acquaintance between the family of applicants and respondent no. 2. It is further stated in the application that after performing puja and rituals after marriage, respondent no. 2 returned to her parental home instead of staying at matrimonial home, and she did not return for cohabitation for nearly six months thereafter.

6. It is further stated in the application that at the time of Diwali festival in the year 2015, due to intervention of the relatives and the mother of applicant no. 1, respondent no. 2 returned to her matrimonial home for cohabitation with Shivaji but no marital

status was established between the duo. It is further stated in the application that, thereafter respondent no. 2 and her husband lived happily for hardly 20 days but there were no physical relations between them and as such father of respondent no. 2 was called upon to give understanding to respondent no. 2. Father of respondent no. 2 then gave her understanding so as to perform marital duties and live a happy married life. Even after giving understanding, respondent no. 2 did not pay any heed to the same and chose to remain at her parental home for approximately 2½ years.

7. It is further stated in the application that due to the strained relations between Shivaji and respondent no. 2, Shivaji decided to do job at Mumbai and started residing at Vasai. Sometime in the first week of April 2017, Shivaji asked his father-in-law that he would come to pick up respondent no. 2 so that they can resume cohabitation. Upon Shivaji's request, respondent no. 2 agreed to cohabit with him with full marital understanding. Upon resuming cohabitation, within a short period of two days, there was again exchange of words between respondent no. 2 and Shivaji and respondent no. 2 alleged that her marriage was performed with Shivaji, against her wish. It is further stated in the application that though Shivaji made every possible attempt to change the mind of respondent no. 2 by giving her proper understanding considering the family relations between them and to resume cohabitation, somehow they lived together for a period of one month thereafter and all of a sudden respondent no. 2

without informing Shivaji, left the matrimonial home and reached her parental home. It is further stated in the application that the applicants and Shivaji thereafter learnt that respondent no. 2, filed complaint against them for the offences referred to herein above.

B] SUBMISSION OF PARTIES : -

8. Heard learned counsel Mr. Shailendra S. Gangakhedkar for the applicants and learned APP Mr. A. M. Phule for respondent no.1/State.

9. Learned counsel for the applicants submitted that the respondent no. 2 has filed complaint with *mala fide* intention and same is abuse of process of law. The allegations levelled against them are general in nature and there is no specific overt-act at the hands of accused persons. The applicants never shared common shelter at any point of time. The complaint is filed only with a view to harass the entire family of the applicants. He further submitted that, the perusal of FIR nowhere shows allegations against the applicants and continuing the said prosecution against them is nothing but sheer abuse of process of law. The contents of the FIR lacks the ingredients of the offences alleged against the applicants and, hence, FIR be quashed and set aside in the interest of justice.

10. Learned APP Mr. A. M. Phule has strongly objected to the application and submitted that respondent no. 2 has made specific allegations against the applicants, which shows that
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cognizable offence is made out. All the accused and respondent no. 2 were staying together at the relevant time. Hence, there is no question of quashing the First Information Report.

C] ANALYSIS : -

11. Respondent no. 2 has specifically stated in the FIR that applicants no. 1 and 2, who are the brother-in-law and sister-in-law, ill-treated her using foul language and made unlawful monetary demand. Due to non-fulfillment of monetary demand, she was beaten up on several occasions. In the said complaint, respondent no. 2 has specifically stated that initially for a period of one month, she was treated with love and affection by her husband and later on she was ill-treated and harassed. Respondent no. 2 tolerated the harassment for about four and half years and when it became unbearable for her, she lodged First Information Report No.0175/2021 with Bori Police Station, Dist. Parbhani, for the offences punishable under Sections 498A, 323, 504 r/w 34 of the Indian Penal Code, against the applicants.

12. On perusal of the First Information Report, it appears that there is specific allegation against the applicants, who are brother-in-law and sister-in-law of respondent no. 2 and they have played role in harassing the respondent no. 2. The applicants, respondent no. 2 and her husband were staying together in common house at the relevant time. The husband of respondent no. 2 Shivaji and her sister-in-law were harassing respondent no. 2 and used to keep her starved. The unlawful demand of

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Rs.50,000/- was made by husband for purchasing the motorcycle. The present applicants adopted the same language. There are allegations against applicants for harassing the complainant / informant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment in the matrimonial home. The question whether the respondent no. 2 has in fact been harassed and treated with cruelty is a matter of trial but at this stage, no case is made out for quashing the FIR.

13. Thus, taking into consideration the complaint of Respondent No. 2 about harassment meted out to her and the seriousness of statements recorded in the First Information Report, we are of the considered view that this cannot be a fit case where the powers of this Court under Section 482 of the Code of Criminal Procedure should be exercised for quashing of the First Information Report. Needless to state, any observations made herein are only for the purposes of deciding the present application only and would have no bearing on the final adjudication of the proceedings.

14. In the result, we pass the following order :

ORDER

. Criminal Application stands rejected.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE